

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Bryan Coe,

Plaintiff,

v.

TGP Communications LLC,

Defendant.

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Case No:

DEMAND FOR JURY TRIAL

Plaintiff Bryan Coe (“*Plaintiff*”), by and through its undersigned counsel, for its Complaint against Defendant TGP Communications LLC (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §101 *et seq.*

2. A video of people walking in the New York City Halloween parade dressed in different costumes chanting about the Coronavirus pandemic (the “*Video*”) was authored by Bryan Coe in which Plaintiff owns the rights.

3. Defendant is a media company which owns and operates a website at URL: www.thegatewaypundit.com (the “*Website*”).

4. Defendant, without permission or authorization from Plaintiff, actively copied and displayed the Video on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff Bryan Coe is a New Jersey resident.

6. Upon information and belief, Defendant TGP Communications LLC, is a Missouri

limited liability company with a principal place of business at 12300 Old Tesson Road Suite 400-G, Saint Louis in Saint Louis County, Missouri.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over Defendant because it maintains its principal place of business in Missouri.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because Defendant does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

A. Plaintiff's Copyright Ownership

10. Plaintiff is a professional video journalist and is the legal and rightful owner of certain videos which Plaintiff commercially licenses.

11. Plaintiff has invested significant time and money in building Plaintiff's video portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the “USCO”) which cover many of Plaintiff's videos while many others are the subject of pending copyright applications.

13. Plaintiff's videos are original, creative works in which Plaintiff owns protectable copyright interests.

14. On November 1, 2022, Plaintiff authored the Video. A still frame copy of the Video is attached hereto as Exhibit 1.

15. In creating the Video, Plaintiff personally selected the subject matter, timing, lighting, angle, perspective, depth, lens and camera equipment used to capture the image.

16. On December 10, 2022, the Video was registered by the USCO under Registration No. PA 2-393-270.

17. Plaintiff created the Video with the intention of it being used commercially and for the purpose of display and/or public distribution.

B. Defendant's Infringing Activity

18. Defendant is the registered owner of the Website and is responsible for its content.

19. Defendant is the operator of the Website and is responsible for its content.

20. The Website is a key component of Defendant's popular and lucrative commercial enterprise.

21. The Website is monetized in that it contains paid advertisements and, upon information and belief, Defendant profits from these activities.

22. The Website is monetized in that it sells merchandise to the public and, upon information and belief, Defendant profits from these activities.

23. On or about November 1, 2022, Defendant displayed a still frame from the Video on the Website as part of an on-line story at URL: <https://www.thegatewaypundit.com/2022/11/anti-vax-protesters-lead-new-york-city-halloween-parade-chanting-fk-joe-biden-video/>. A copy of a screengrab of the Website including the still frame from the Video is attached hereto as Exhibit 2.

24. Defendant also posted Twitter link to the New York Post article that published the Video. A copy of a screengrab of the Website including this Twitter link is attached hereto as Exhibit 2.

25. The still frame from the Video was stored at URL: <https://www.thegatewaypundit.com/wp-content/uploads/nyc-covid-parade-.jpg>.

26. Without permission or authorization from Plaintiff, Defendant volitionally copied and/or displayed a still frame from Plaintiff's copyright protected Video on the Website.

27. Upon information and belief, the still frame from the Video was copied and displayed by Defendant without license or permission, thereby infringing on Plaintiff's copyrights in and to the Video (hereinafter the unauthorized use set forth above is referred to as the "*Infringement*").

28. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed tangible medium of expression that was sufficiently permanent or stable to permit it to be communicated for a period of more than a transitory duration and therefore constitutes a specific infringement.

29. The Infringement is an exact copy of a still frame from Plaintiff's original video that was directly copied and displayed by Defendant on the Website.

30. Upon information and belief, Defendant takes an active and pervasive role in the content posted on its Website, including, but not limited to copying, posting, selecting, commenting on, and/or displaying images including but not limited to the still frame from Plaintiff's Video.

31. Upon information and belief, Defendant directly contributes to the content posted on the Website by, *inter alia*, directly employing reporters, authors, and editors as its agents, including but not limited to Jim Hoft whose profile on Defendant's Website lists him as a "Founder and Editor" (the "*Employee*").

32. Upon information and belief, at all material times the Employee was acting within

the course and scope of his employment when he posted the Infringement.

33. Upon information and belief, the still frame from the Video was willfully and volitionally posted to the Website by Defendant.

34. Upon information and belief, Defendant is a sophisticated media company which owns a comprehensive portfolio of digital marketing platforms and has advanced operational and strategic expertise in the media industry where copyright is prevalent.

35. Upon information and belief, Defendant's staff have significant experience in copyright matters and are familiar with specific journalistic practices including the need to ensure that images used in their articles have been properly licensed.

36. Upon information and belief, Defendant has not implemented adequate internal policies to verify copyright ownership before content use, indicating a gross negligence in legal compliance, which is essential for a company with Defendant's reach, capabilities, and level of sophistication.

37. Upon information and belief, Defendant's internal policies, if any, are either not designed to verify copyright ownership before content use or are systematically ignored, indicating a willful, recurring disregard for copyright compliance.

38. Upon information and belief, the Infringement was not posted at the direction of a "user", as that term is defined in 17 U.S.C. §512(c).

39. Upon information and belief, Defendant was aware of facts or circumstances from which the determination regarding the Infringement was apparent as the Video contained Plaintiff's watermark. Defendant cannot claim that it was not aware of the infringing activities, including the specific Infringement which form the basis of this complaint, since such a claim would amount to only willful blindness to the Infringement on the part of Defendant.

40. Upon information and belief, Defendant engaged in the Infringement knowingly and in violation of applicable United States copyright laws.

41. Upon information and belief, Defendant has the legal right and ability to control and limit the infringing activities on its Website and exercised and/or had the right and ability to exercise such right.

42. Upon information and belief, Defendant monitors the content on its Website.

43. Upon information and belief, Defendant has received a financial benefit directly attributable to the Infringement.

44. Upon information and belief, the Infringement increased traffic to the Website and, in turn, caused Defendant to realize an increase in its advertising revenues and/or merchandise sales.

45. Upon information and belief, a large number of people have viewed the unlawful copy of the Video on the Website.

46. Upon information and belief, Defendant at all times had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

47. Plaintiff created the Video with the intention of it being used commercially and for the purpose of display and/or public distribution.

48. Defendant's use of the Video, if widespread, would harm Plaintiff's potential market for the Video.

49. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

50. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

51. The Video is an original, creative work in which Plaintiff owns a valid copyright.

52. The Video is properly registered with the USCO and Plaintiff has complied with all statutory formalities under the Copyright Act and under regulations published by the USCO.

53. Plaintiff has not granted Defendant a license or the right to use the Video in any manner, nor has Plaintiff assigned any of its exclusive rights in the copyright to Defendant.

54. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

55. Defendant's reproduction of the Video and display of the Video constitutes willful copyright infringement.

56. Upon information and belief, Defendant willfully infringed upon Plaintiff's copyrighted Video in violation of Title 17 of the U.S. Code, in that Defendant used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, a still frame from Plaintiff's original and unique Video without Plaintiff's consent or authority, by using it on the Website.

57. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for the infringement pursuant to 17 U.S.C. § 504(c).

58. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs

pursuant to 17 U.S.C. § 505 from Defendant.

59. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

JURY DEMAND

60. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed upon Plaintiff's rights to the Video in violation of 17 U.S.C. §501 *et seq.* and therefore award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in and to the Video by copying and displaying it without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504(b) in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for the infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre-judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: June 24, 2024

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